



September 25, 2015

Dr. Steven Bohlen
Division of Oil, Gas & Geothermal Resources
Department of Conservation
801 K Street, MS 24-02
Sacramento, CA 95814

ATTN: Arroyo Grande Oil Field Aquifer Exemption

Submitted electronically via Comments@conservation.ca.gov

Thank you for the opportunity to submit these comments on behalf of Clean Water Action and our 50,000 California members. We appreciate this unprecedented opportunity for the public to engage directly in the State's decisions about which aquifers should or should not be proposed for exemption from protection under the Safe Drinking Water Act (SDWA). The new process, which includes a public hearing and public comment, mandated by recently passed legislation and Public Resources Code 3131, is an important tool for ensuring protection of groundwater in California. It is our hope that this public engagement will lead to better decisions about protecting groundwater quality and will help the state avoid the catastrophic failures in its implementation of the Underground Injection Control program. We also thank the Division of Oil, Gas and Geothermal Resources (the Division) and the State Water Resources Control Board (the State Board) for extending comment period by one week in order to allow written comments to incorporate information from the public hearing. We urge all future aquifer exemption comment periods to follow this same structure, with increased time for comment following the hearing.

This comment letter asserts Clean Water Action's opposition to the proposed expansion of the current aquifer exemption designation in the Arroyo Grande Oil Field located in unincorporated San Luis Obispo County. The Division and the State Board should not submit this application for exemption to US EPA. California is in an extreme drought and the State should proceed with caution on all exemption requests.

Additionally, the Division is currently allowing injection into this aquifer despite its current protected status under the Safe Drinking Water Act. The proposed area for exemption is the site of 14 disposal wells and 76 enhanced recovery wells. These wells were issued permits illegally, in violation of SDWA, to inject into protected waters and must be shut in immediately. They must only be allowed to operate if an exemption is granted by US EPA.

Furthermore, an analysis of this proposed exemption expansion and the actual activities in this aquifer, call into question the validity of the existing exemption in the Arroyo Grande field. The Division and the State Board should evaluate the existing exemption with the same scrutiny and overturn the exemption if it fails to meet the standards for the expanded exemption, as there does not appear to be zonal isolation between the two sections of the aquifer.

Clean Water Action opposes this proposed exemption for a number of reasons, including the following:

Neighbors of the proposed exemption and numerous local residents oppose the exemption, and the public demands protection of water resources. The overwhelming sentiment of public comments at the hearing on Sept 21, 2015, expressed opposition to the proposed exemption. A number of comments were made by neighbors of the Arroyo Grande field, many of whom rely on private water wells for drinking and/or irrigation. These individuals have the most to lose and their opposition to the project should be weighted appropriately. Our opposition follows the lead of these residents and their desire to protect their property and local environment. At the hearing, only two comments were made in support of the exemption and both were made by individuals with ties to oil industry trade or interest groups.

The State is not obligated to submit an application for exemption simply because the aquifer meets the criteria in 40 CFR 146.4. California is in the midst of an extreme drought and is facing an ongoing water supply crisis. It is likely that the state, and the Central Coast region, will experience future water crises. Since an application to exempt this aquifer from SDWA protection would be filed by the State, the regulating agencies charged with protecting California's water resources should exercise discretion, and act in the best interest of the state by not submitting this application. Submitting this application to US EPA would leave only the Federal Government's lower standards of protection of drinking water under the federal definition, which does not meet California's goal of protecting all beneficial uses. Allowing the oil industry to inject into an aquifer that may now and in the future have beneficial uses, runs counter to the myriad laws, policies and orders currently being considered or implemented by the State in order to conserve, protect and better manage water resources.

The criteria for exempting aquifers in 40 CFR 146.4 are out of date and do not reflect the current and future water needs of California. The criteria for exemption were established in the early 1980's and were heavily influenced by industry pressure. The criteria do not reflect California's current water supply crisis, and therefore should not be the basis for determining which aquifers should be protected. Treatment technology and cost, water well drilling practices, and population patterns and growth have changed considerably in the last 30 years and will continue to change, rendering the criteria in 40 CFR 146.4 inappropriate for making determinations in 2015 and beyond. California should base any application to EPA for an exemption on up to date criteria that consider the current and future water realities of our state.

This aquifer currently has a beneficial use. Therefore it fails to meet California's standard for aquifer exemption eligibility as defined in Public Resources Code 3131(a)(2) and must remain protected. Current practices in this oil field and aquifer, as described in the documents submitted by the operator, include treating the formation water and discharging to Pismo Creek for environmental and habitat purposes. This is a beneficial use which must be protected. Additionally, the ability to treat this water in order to be used for environmental purposes demonstrates that it could also be treated to other beneficial uses, such as municipal or domestic water supply (MUN) or agricultural supply (AGR) as well as any other beneficial use that require similar water quality. Currently available and utilized treatment technology is clearly adequate and the operator of this oil field has demonstrated that such treatment is not only possible, but is currently being utilized. This aquifer has current beneficial uses, and therefore it should be disqualified from consideration for exemption. The basic description of the activities at this site show clearly that this aquifer has the potential to be used as a drinking water source and therefore must be protected under SDWA and does not meet California's criteria for eligibility for exemption based on the criteria in PRC 3131.

Because there are current and potential future beneficial uses for waters contained in this aquifer, the operator must submit a plan under California's Antidegradation Policy (Resolution No. 68-16) and the State Board must agree that any degradation of this aquifer is in the best interest of the people of the state. The activities described by the operator suggest that over time, the removal of water, treatment, and reinjection of concentrated contaminated byproduct would degrade the water quality in the aquifer. Any degradation of waters with potential beneficial uses must be determined to be in the best interest of the people of the state and must reasonably protect beneficial uses. There has not been an antidegradation analysis conducted for this proposed exemption to determine what level of degradation will occur because of activities enabled by the exemption nor any determination that such degradation would be in the best interest of the people of the state of California. It also does not appear that such a determination has been made for the existing exemption, calling into question its compliance with this policy.

The operator has been injecting illegally into a non exempt aquifer. Rather than rewarding this behavior by changing the boundaries of the exemption, the State should enforce existing laws and work to change the culture of non compliance by the oil industry. Allowing an operator to retroactively apply for an exemption to make illegal wells compliant, incentivizes continued violations of the law. Granting this exemption would set a dangerous precedent and would encourage operators to willfully avoid compliance with SDWA. There have been no repercussions for oil and gas companies who are currently violating this law in California. Instead the state has delayed implementation of SDWA in order to give operators a chance to make their violations legal. Lax enforcement and the practice of retroactively re-writing the rules are troubling examples of poor oversight of the oil and gas industry. When such a regulatory environment exists, it is no surprise that rules are ignored, reporting is lax and the industry constantly finds ways to avoid compliance. In just the last year alone, there are numerous examples of such bad behavior, ranging from incomplete and inaccurate reporting of SB 4 data, to over 100 companies failing to report data under SB 1281 by the mandated deadline (only 30 of which were fined), to the discovery of

hundreds of previously unpermitted disposal ponds, to the recent example of Bennett Petroleum falsifying hundreds of reports. Clearly this industry considers itself above the law, and the preferential treatment from the Division over the last 100 years has contributed to that dynamic. Allowing an expanded aquifer exemption where an operator has been illegally injecting undermines efforts to change the culture of the Division and how it relates with the regulated industry. Denying this application and issuing fines for illegally injecting into a non exempt aquifer would be the appropriate way to enforce the law.

In conclusion, we appreciate the opportunity to register our opposition to the expansion of this opposition. It is clear that exempting this aquifer is not in the best interest of the state, and therefore urge the Division and the Water Board not to apply for an exemption to US EPA; conduct a review of the basis for the existing exempted portion of the aquifer; and to immediately shut down all injection wells operating in non exempt portions of this aquifer.

Sincerely,

A handwritten signature in black ink, appearing to read "A. Grinberg", with a long horizontal line extending from the end of the signature.

Andrew Grinberg
Oil and Gas Program Manager

cc: State Water Resources Control Board
Governor Jerry Brown
Senator Fran Pavley, Chair, Senate Natural Resources and Water Committee
Assembly Member Das Williams, Chair, Assembly Natural Resources Committee
Senator Bob Wieckowski, Chair Senate Environmental Quality Committee